Recent CFPB rules face repeal with no return under Trump

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CFPB Director Rohit Chopra

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The incoming Trump administration is expected to seek the repeal of some regulations finalized by the Consumer Financial Protection Bureau. On the chopping block are rules finalized by the CFPB since August, the six-month lookback deadline for lawmakers to repeal rules under the Congressional Review Act.

CFPB Director Rohit Chopra has bombarded the financial industry with a flurry of last-minute rules that have drawn the ire of banks and congressional Republicans. Agency rules that get overturned by Congress using the CRA come with a major catch — once the rule is repealed, the agency cannot issue another rule that is "substantially the same," an issue that could hamstring future directors.

In addition, the House of Representatives has less than 60 legislative days when the Senate's filibuster rules do not apply. Republicans will have one of the slimmest Republican majorities under Trump, testing whether the repeal of populist rules like the CFPB's $5 overdraft fees will be tough to push through.

Sen. Tim Scott, R-S.C., has repeatedly criticized Chopra for refusing to halt rulemaking in the final days of the Biden administration. Scott, who takes over as chairman of the Senate Banking Committee in the 119th Congress, said at a hearing last month that Republicans would have to overturn CFPB rules by introducing joint resolutions under the CRA.

"Director Chopra has advanced his agenda at a break-neck speed," Scott said.

Since August, the CFPB has finalized rules capping overdraft fees at $5, requiring oversight of giant nonbank payment companies Apple, Google, PayPal and others, and ensuring that consumers have access to their own financial data through open banking. (The bureau also finalized a less-controversial rule on mortgage disclosures for clean energy loans.)

Chopra spent much of his tenure targeting bank fees for elimination — so-called surprise overdraft fees, which he has claimed are "unfair." When President-elect Donald Trump appoints a new CFPB director, that official is expected to repeal guidance — which is nonbinding — on a host of issues including corporate surveillance of workers and the use of "black box" AI or algorithmic scores in decisions on hiring, promotions, reassignment or retention.

The CFPB also is in the process of completing a rule intended to ban the inclusion of medical debts in credit reports, but that rule has not yet been finalized.

Here are final rules to watch for in 2025.

Overdraft fees capped at $5

Some experts questioned why the CFPB would finalize a rule capping overdraft fees at $5 in mid-December, which Republicans could easily choose to repeal.

On Dec. 12, the same day the rule was finalized, four bank trade groups and three banks sued the CFPB to overturn it. The groups also filed a preliminary injunction to stop the rule from taking effect.

Bankers and critics of the CFPB have claimed that Chopra finalized the rule and was engaging in "politics" to put Republican lawmakers in the awkward position. Choosing to repeal a popular rule could backfire on Republicans, but the political calculation by Chopra also threatens to undercut the consumers he is trying to protect if the rule gets repealed and another director cannot issue a similar rule in the future.

The rule applies only to the largest banks and credit unions with more than $10 billion in assets. The CFPB said the rule would allow banks to recover breakeven costs for overdraft services. The final rule would rescind an exemption for overdraft services from the Truth in Lending Act, a disclosure statute passed by Congress in 1968.

The rule would reclassify overdraft fees as overdraft loans that require disclosures of annual percentage rates, a change overturning the status quo on overdraft that has existed for more than 50 years.

Bank trade groups allege that the bureau exceeded its statutory authority by seeking to regulate overdraft fees. Lindsey Johnson, president and CEO of the Consumer Bankers Association, said a CFPB director appointed by Trump can do a number of things to put the rule on hold if Congress does not choose to repeal it.

"The next administration, I would fully anticipate that they're going to see there is no logical way that we're going to create a government-set price at five bucks," Johnson said. "They can pause it, and then they can study it. They can change it dramatically, or they can rescind it."

Consumer advocates, on the other hand, say that many Republicans may be wary of repealing a rule that helps struggling consumers.

"I think we can beat an overdraft CRA — members won't want to be seen blocking a rule that would reduce overdraft fees from $35 to $5, returning $5 billion in abusive big bank profits to struggling consumers," said Lauren Saunders, associate director at the National Consumer Law Center.

Saunders also said the impact of a CRA repeal is overstated because there are other ways the CFPB could reduce overdraft fees without doing a rulemaking in the same way.

Supervision of large nonbank payment firms

Given that Elon Musk has called for the elimination of the CFPB, which requires an act of Congress, a final rule to supervise the largest nonbank companies that offer digital wallets and funds transfers might be on the chopping block.

Still, the CFPB did not name the nonbank companies that it intends to supervise and examine when it issued its final rule in November. The CFPB has always had enforcement authority over large payments companies, but the rule will allow the bureau to conduct examinations to make sure that the companies are complying with the law.

The rule allows the CFPB to supervise and examine nonbanks handling more than 50 million payment transactions per year. The Dodd-Frank Act of 2010 gave the CFPB the power to designate so-called larger participants in a specific financial market, and Chopra has long warned of the impact of unsupervised tech firms' growing influence in the payments sector.

Musk has taken an interest in the CFPB because shortly after Chopra was sworn into office in 2021 he publicly demanded that Amazon, Apple, Google, Facebook, PayPal and Square turn over information about their payment products and practices. It is unclear what ability, if any, the "Department of Government Efficiency" has, given that it is not an official department. Musk and Vivek Ramaswamy have advisory roles to the president.

Open banking / Financial Data Transparency Act

The CFPB's 1033 open banking rule, finalized in mid-October, requires that banks share financial data at a consumer's request. The CFPB's final rule added third-party payment apps, sweeping Apple Pay, Google Pay, PayPal, Zelle, Venmo and others into the scope of the rule.

Almost immediately after the rule was finalized, the Bank Policy Institute and the Kentucky Bankers Association sued the CFPB, claiming the bureau had exceeded its authority. They want banks to be given discretion to deny third parties access to sensitive financial information.

But a CRA repeal is unlikely largely because Congress gave the CFPB the clear authority to adopt a rule on data privacy through the Dodd-Frank Act. The rule was finalized nearly 15 years later, at a time when frauds and scams through technology, apps and text messages are rampant.

Banks are concerned the rule will expose them to greater liability and even asked the CFPB, unsuccessfully, for the ability to charge third-party fintech companies a fee to cover the cost of providing consumers' data.

David Silberman, a senior advisor at the Financial Health Network and a former acting deputy director at the CFPB, said he is skeptical that Congress would repeal the data-privacy rule.

"If [banks] could get [the] requirement to share account numbers and routing numbers ...out of the rule so that [fraudsters] couldn't use the data to make payments, that would solve their problems," Silberman said.

He said that all of the large banks are already sharing consumer data through APIs, or application programming interfaces, and consumers are sharing their financial information with fintechs, so it is unclear whether the rule creates a large, incremental fraud risk.

Jim McCarthy, chairman of financial services firm McCarthy Hatch and a former CFPB senior advisor, said he believes the 1033 rule provides enough protection for banks that if they meet the requirements, they can avoid liability.

"We have to move data in and out of these banks, and banks need to become more competitive, so I think 1033 is going to continue, and the anchor is going to be safety and security of your personal financial information and your personal information, and people are going to flock to banks," McCarthy said.

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